IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1490 OF 2005
IN
CHAMBER SUMMONS NO.1050 OF 1996
IN
EXECUTION APPLICATION NO.111 OF 1996
IN
ARBITRATION PETITION NO.48 OF 1996
IN
AWARD NO.230 OF 1995

Nagarjuna Securities Ltd. ..Petitioner.

V/s.

M/s.Anil Mithalal & Co. & Ors. ..Respondents.

And

The Official Assignee of Bombay ..Applicant.

Mr.Kishore P. Jain with Mr. Bhavik P. Manek for Official Assignee-Applicant.

Ms.Dipti Chand with Mr.V.B.Pinge i/b. Advani & Co. for respondent No.2.

Mr.D.P.Kothari, 1st Asst. to Official Assignee present.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 30, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant pleadings on record.

2. By this Chamber Summons, Official Assignee has applied for recalling, rescinding and reviewing of the order passed by me on 19th January, 2004 in

Chamber Summons No.1050 of 1996. By that order I had accepted the prayer of respondent No.2 for raising attachment in respect of property being residential Flat No.47 Jaldarshan, Jaldarshan Co-operative Housing Society Ltd., 51, D. Jagmohandas Marg, Nepean Sea Road, Bombay 400 036 for the reasons recorded in the said order.

3. By this Chamber Summons, Official Assignee has brought on record that the order passed in favour of respondent No.2, by me on 19th January, 2004, was invited by the parties. It is a collusive order. The fact that it is a collusive order is reinforced as the Respondent No.1 contesting party to the Chamber Summons filed by the respondent No.2 failed to place on record that the said party had no right to deal with the disputed property in any manner as the same had already vested in the Official Assignee after adjudication was done in terms of order dated 14th December, 1999. In other words, the respondent No.2 cannot assert to have become owner in respect of the said property. As a matter of fact, after 14th December, 1999, the real owner(Respondent No.1), who has since been adjudicated as insolvent, had no right, title and interest to deal with the said property in any manner by virtue of mandate of

Section 17 of the Insolvency Act. This fact has not been placed on record either by the Respondent No.1 or by the respondent No.2, inspite of knowledge of existence of that fact; which obviously is a subsequent development after institution of Chamber Summons, but relevant for considering the relief pressed in the Chamber Summons at the instance of respondent No.2. It is contended that it is not the case of the respondent No.2 that the sale transaction in respect of the said Flat in favour of the respondent No.2 including registration of conveyance deed has been completed before 14th December, 1999. If so, the real owner(Respondent No.1) could not have sold the said property to the respondent No.2 in any case after that date. The abovesaid submission deserves acceptance. No just explanation is forthcoming as to why the Respondent Nos.1 and 2 suppressed this material fact from this court.

4. It is then rightly contended on behalf of the Official Assignee that the respondent No.2 as well as debtor (Respondent No.1) have intentionally not highlighted the fact that similar relief as claimed in the Chamber Summons No.1050 of 1996, was claimed by the respondent No.2 in respect of the suit flat in the Notice of Motion No.3231 of 1995; which relief

was rejected as can be discerned from paragraph-5 of the order passed by the Single Judge of this Court on 6th September, 1996 in said Notice of Motion. On account of the opinion recorded in the said order, neither the real owner(Respondent No.1) nor the respondent No.2 could have had proceeded with the transaction in respect of the suit flat. This fact was crucuial. Indeed, passing reference is made to the said order with a caveat that the applicant intends to challenge the said order in appeal. Obviously, that was an attempt to mislead this court.

5. As both the above said crucial facts were not brought to my notice when the chamber summons was argued by the counsel appearing for the respective parties, I have no hesitation in accepting the grievance of the Official Assignee that the order dated 19th January, 2004 passed by me was obtained by the respondent Nos.1 and 2 in collusion with ulterior motive.

6. There is also substance in the argument of the Official Assignee that the Memorandum of Understanding on which reliance is placed by the respondent No.2, on which basis to the respondent No.2 asserts right, title and interest in the

disputed property, is not a registered document. If so, that document is inadmissible in law and cannot be looked into.

7. Suffice it to observe that the order dated 19th January, 2004 passed by me on Chamber Summons No.1050 of 1996 cannot be allowed to continue. The same is recalled forthwith, being a product of collusion between the respondent Nos.1 and 2. That order has been secured from this court by suppressing material facts, playing fraud and misleading this court. Such order cannot be allowed to continue even for a minute. To get over the observation that the order passed by this court on 19th January, 2004 was the product of collusion between the respondent Nos.1 and 2, it was contended on behalf of the respondent No.2 that nothing prevented respondent No.3 from bringing the relevant facts to the notice of this court and also to place on record the same; Which facts are pressed into service by the Official Assignee before this Court. That was possible for respondent No.3 as he was party to the proceeding in Summary Suit No.4270 of 1995 and Notice of Motion No.3231 of 1995. This argument clearly overlooks that the primary obligation to disclose those facts was on the applicant/respondent No.2 and the real

owner/- (respondent No.1), so as to place on record that the property has since vested in the Official Assignee on and from 14th December, 1999. That fact was suppressed by the respondent Nos.1 and 2 for reasons best known to them.

8. Hence, this Chamber Summons succeeds in terms of prayer clause (a), (b), (c) and (d) which read thus:

> (a) that delay, if any, in taking out the present Chamber Summons be condoned;
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> (b) that this Hon'ble Court be pleased to recall, rescind, review the Order dated 19th January, 2004 Exhibit "A" hereto passed by His Lordship Justice Shri A.M.Khanwilkar while disposing off Chamber Summons No.1050 of 1996 taken out by Respondent No.2 in the above matter and also be pleased to pass appropriate Order to the effect that all acts, deeds and things done pursuant to and as a consequence of the said Order dated 19th January, 2004 stand nullified and shall be of no consequence;
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> (c) that Respondent No.2 their agents, servants, representatives, persons claiming through or under them, be restrained from in any manner acting upon and/or relying on the said Order dated 19th January, 2004 Exhibit "A" hereto passed by His Lordship Justice Shri A.M.Khanwilkar while disposing off Chamber Summons No.1050 of 1996 taken out by Respondent No.2 in the above matter for any purpose or in any manner whatsoever;
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> (d) that the Official Assignee be permitted to take physical possession of the said flat from whomsoever found in possession thereof, if necessary, by police assistance and by breaking open the lock/s found thereon

> and thereafter seal the said flat till further Orders to be passed by this Hon'ble Court and/or the Hon'ble Insolvency Court.

The chamber summons is made absolute on the above terms with exemplary costs.

9. It is made clear that it will be open to the Official Assignee to pursue appropriate remedy against the respondent No.2 as well as the original owner of the suit property(respondent No.1), including for having filed misleading and false affidavit in the proceedings before this court, which application will be considered on its own merits.

10. This chamber summons is made absolute on the above terms with exemplary costs quantified at Rs.10,000/-(Rs.Ten thousand only) to be paid to the Official Liquidator by the respondent No.2. Costs to be paid within two weeks from today. Ordered accordingly.